

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 20.9.302, 20.9.306, 20.9.308,) PROPOSED AMENDMENT
20.9.311, 20.9.315, and 20.9.320)
pertaining to youth who have been)
paroled from youth correctional)
facilities)

TO: All Concerned Persons

1. On June 28, 2011, at 10:30 a.m., the Department of Corrections will hold a public hearing in Room 4-65 of 5 South Last Chance Gulch, at Helena, Montana, 59620, to consider the proposed amendment of the above-stated rules.

2. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Corrections no later than 5:00 p.m. on June 22, 2011, to advise us of the nature of the accommodation that you need. Please contact Serenity Osborn, Department of Corrections, 5 South Last Chance Gulch, at Helena, Montana, 59620; telephone (406) 444-9609; fax (406) 444-0522; or e-mail SOsborn@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

20.9.302 PAROLE AGREEMENT VIOLATION, INITIAL INVESTIGATION, AND DETAINER (1) remains the same.

(2) The parole officer must immediately investigate to determine whether the allegations constitute a violation of the written parole agreement. If, on the basis of the investigation, the parole officer concludes that the allegations do not constitute a violation of the written parole agreement ~~or do not warrant return of the youth to a secure placement facility~~, the officer shall dismiss the allegations and immediately cause the youth to be released from detention.

(2)(a) through (5) remain the same.

AUTH: 52-5-102, 52-5-129, MCA

IMP: 52-5-102, 52-5-126, 52-5-127, 52-5-128, 52-5-129, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend ARM 20.9.302 to clarify that if the parole officer determines that the youth did not violate the written parole agreement the parole officer must dismiss the allegations and release the youth from detention.

20.9.306 SCHEDULING AND NOTICE OF HEARING (1) remains the same.

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(2) As soon as possible after the alleged violation, and at least ~~72~~ 24 hours prior to the hearing, the parole officer shall serve the youth with the forms approved by the ~~juvenile corrections~~ Youth Services ~~d~~Division which include written notice of the time, date, location of the hearing, and the alleged violation of the parole agreement.

AUTH: 52-5-102, 52-5-129, MCA

IMP: 52-5-102, 52-5-126, 52-5-127, 52-5-128, 52-5-129, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend ARM 20.9.306 to reduce the amount of time a youth must stay in detention before the youth has a hearing and to reflect change in name of the division.

20.9.308 HEARING PROCEDURES (1) through (4) remain the same.

(5) The hearing shall be conducted informally. The hearings officer must ~~tape~~ record the hearing and establish for the record the identity of persons present and that the youth received prior written notice of:

(5)(a) through (6) remain the same.

(7) The hearings officer must review the evidence submitted by both parties and if, by a preponderance of the evidence, the hearings officer finds that the youth committed the alleged violation, the hearings officer must decide if the youth's placement is to be returned to a youth correctional facility or if the hearings officer recommends the youth be placed in a community placement. The hearings officer may consider mitigating or aggravating circumstances in reaching the decision.

(8) remains the same.

(9) The hearings officer shall attach to the final decision, an appeal form approved by the ~~juvenile corrections~~ Youth Services ~~d~~Division containing information regarding the appeal process of the hearings officer's decision.

AUTH: 52-5-102, 52-5-129, MCA

IMP: 52-5-102, 52-5-126, 52-5-127, 52-5-128, 52-5-129, MCA

STATEMENT OF REASONABLE NECESSITY: Changes are necessary to allow the hearings officer flexibility relative to recording the hearing. The amendments also reflect that a hearings officer does not have all the resources at hand to decide a youth's placement in the community. The hearings officer can recommend a community placement, but the actual placement involves a process of application, funding approval, and acceptance by a facility. The process must include juvenile parole officers, bureau chief approval, and acceptance by the community facility in question. The name of the division was changed from juvenile corrections to Youth Services.

20.9.311 APPEAL (1) The youth may appeal the hearings officer's decision to the department director by submitting a notice of appeal and any additional information within five days of the hearing. Upon request of the youth to the department, the youth may receive a ~~written transcript~~ copy of the recording of the

hearing. The director or director's designee shall review the record and grant or deny the appeal within five days of receipt of the appeal.

(2) ~~Within one business day of~~ As soon as possible following receipt of request for a copy of the recording of the hearing transcript, the hearings officer shall ~~cause a transcription~~ provide copies of the hearing ~~tape~~ recording to be made and submitted to the youth and to the department director.

(3) and (4) remain the same.

AUTH: 52-5-102, 52-5-129, MCA

IMP: 52-5-102, 52-5-126, 52-5-127, 52-5-128, 52-5-129, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend ARM 20.9.311 to delete the necessity to provide a written transcript of the hearing and to lengthen the amount of time in which the department must provide a recording to the youth and department director. The department does not have the resources to provide written transcription of the hearing, and cannot provide a recording within one business day of the hearing.

20.9.315 WAIVER OF RIGHT TO HEARING (1) At any time prior to the hearing, the youth may, upon the advice of an attorney, waive his/her right to the hearing on a form provided by the ~~juvenile corrections~~ Youth Services ~~Division~~ for that purpose. A waiver of the hearing constitutes an admission by the youth of the alleged violations and authorizes the ~~youth's parole~~ hearings officer to render a decision on the youth's placement in a youth correctional facility or in the community. A youth not represented by an attorney may not waive the right to a hearing.

AUTH: 52-5-102, 52-5-129, MCA

IMP: 52-5-102, 52-5-126, 52-5-127, 52-5-128, 52-5-129, MCA

STATEMENT OF REASONABLE NECESSITY: Changes are necessary to reflect change in name of the division, to clarify that the hearings officer makes the decision about placement even if the youth waives the hearing, and to make the rule gender neutral.

20.9.320 FAILURE TO APPEAR FOR HEARING (1) If a youth released pending hearing fails to appear for the hearing, the parole office shall issue a ~~warrant for the youth's arrest~~ certificate to detain the youth. The department shall schedule and hold a hearing within 72 hours of the youth's arrest.

AUTH: 52-5-102, 52-5-129, MCA

IMP: 52-5-102, 52-5-126, 52-5-127, 52-5-128, 52-5-129, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend ARM 20.9.320 to clarify that youth parole officers issue a certificate to detain a youth; they do not issue arrest warrants for youth.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Serenity Osborn, Department of Corrections, 5 South Last Chance Gulch, at Helena, Montana, 59620; telephone (406) 444-9609; fax (406) 444-0522; or e-mail SOsborn@mt.gov, and must be received no later than 5:00 p.m., July 5, 2011.

5. Diana L. Koch, Department of Corrections, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Myrna Omholt-Mason, 5 South Last Chance Gulch, Helena, Montana, 59620 or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Diana L. Koch
Diana L. Koch
Rule Reviewer

/s/ Mike Ferriter
Mike Ferriter
Director
Department of Corrections

Certified to the Secretary of State May 16, 2011.